

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JOHN K. WALTON,

Plaintiff,

vs.

MICHAEL MYER, Director of DCCC;
CAPTAIN WEST, Captain of DCCC;
LT. SWECRCK, SGT. MOSS, CO. II
MCNEIL, CO. II GILLESPIE, CO. II
GENO, CO. II JACKSON, BETSY
BROWN, and STORE CLERK FOR
DCCC,

Defendants.

8:20CV155

MEMORANDUM AND ORDER

This matter is before the court on case management. On July 13, 2020, the court received notice that Plaintiff was no longer incarcerated at Douglas County Corrections (“DCC”). ([Filing 8 at CM/ECF p. 2](#), Case No. 8:20CV249.) Plaintiff indicated in a filing in 8:20CV249 ([filing 5 at CM/ECF p. 3](#), Case No. 8:20CV249) that he would be moving to the Nebraska State Penitentiary and the Nebraska Department of Correctional Services (“NDCS”) website reflects that Plaintiff is now in custody in the Diagnostic and Evaluation Center.¹ The court has updated Plaintiff’s address accordingly.

On June 11, 2020, the court ordered Plaintiff to show cause within 30 days why this case should not be dismissed for failure to pay the filing fee assessed by the court on May 6, 2020. ([Filing 8.](#)) In light of Plaintiff’s recent move to a new institution and out of an abundance of caution, the court will give Plaintiff

¹ See https://dcs-inmatesearch.ne.gov/Corrections/COR_input.html.

additional time to show cause why this case should not be dismissed for his failure to pay the initial partial filing fee.

If Plaintiff's failure to pay by the court's deadline was caused by prison officials' failure to adhere to his request to remit payment using funds from his account, his failure to pay within the time ordered by the court will be excused. However, if Plaintiff's failure to pay by the court's deadline was caused by his failure to leave sufficient funds in his account to timely pay the initial partial filing fee, his failure to pay will not be excused. Absent a sufficient response, the case will be subject to dismissal. *See Taylor v. Cassady*, 570 Fed. App'x. 632 (8th Cir. 2014) (holding district court abused its discretion by dismissing case without first taking steps to determine whether prisoner-plaintiff's failure to pay the initial partial filing fee "was caused by circumstances beyond his control, such as prison officials' failure to adhere to his request to remit payment using funds from his account").

IT IS THEREFORE ORDERED that:

1. Plaintiff will have 30 days to show cause why this case should not be dismissed for failure to pay the initial partial filing fee. In the absence of cause shown, this case will be dismissed without prejudice and without further notice.
2. The clerk of the court is directed to set a pro se case management deadline in this case using the following text: **August 17, 2020**: check for response to show cause order.

Dated this 17th day of July, 2020.

BY THE COURT:



Richard G. Kopf
Senior United States District Judge